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SENATE BILL 1216

By Clabough

AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 14. and Title 45, Chapter 6, Part 2, relative to identity theft and pawnbrokers.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 39-14-150, is amended by deleting subsection (a) in its entirety and by substituting instead the following:

(a) A person commits identity theft who knowingly transfers or uses, without lawful authority, a means of identification of another person with the intent to commit, or otherwise promote, carry on, or facilitate any unlawful activity or to enter into a pawn transaction as defined in Title 45, Chapter 6.

SECTION 2. Tennessee Code Annotated, Section 45-6-203, is amended by deleting the word "and" at the end of subdivision (8); by deleting the period at the end of subdivision (9) and substituting instead a semicolon and the word "and"; and by adding the following language as new subdivisions to be designated as follows:

(10) "Appropriate law enforcement agency" means the police department of the city or town in which a pawnshop is located or, if the pawnshop is not within a city or

town or there is no police department in the city or town in which a pawnshop is located, the sheriff's department in the county in which a pawnshop is located;

(11) "Major shareholder" means any person who owns or has a controlling interest in five percent (5%) or more of a corporation;

SECTION 3. Tennessee Code Annotated, Section 45-6-205, is amended by deleting such section in its entirety and by substituting instead the following:

Section 45-6-205. It shall be unlawful for any person to establish or conduct a business of pawnbroking unless such person has first procured a license to conduct such business in the manner and form as provided in this part. Any profits generated by a pawnbroker who has not procured a license as required by this part shall be subject to forfeiture to the state of Tennessee, and the office of the attorney general is authorized to institute such proceedings as necessary to enforce such forfeitures.

SECTION 4. Tennessee Code Annotated, Section 45-6-206, is amended by deleting such section in its entirety and by substituting instead the following:

Section 45-6-206.

(a) To be eligible for and to maintain a pawnbroker's license, an applicant must:

(1) Not have had a conviction for a felony, drug-related offense or theft of property within ten (10) years prior to the filing of the application.

(2) Have net assets, as defined herein, of at least seventy-five thousand dollars (\$75,000), readily available for use exclusively in conducting the business of each licensed pawnbroker;

(3) Agree, upon penalty of forfeiture of the license to conduct such business, that the business will be operated lawfully and fairly within the purpose of this part and in accordance with the requirements of this part;

(4) Show evidence of sufficient insurance coverage on the property held on pledges for the benefit of pledgors to pay the stated value of pawned articles as recited for each pawned article on the pawn stub in case of loss or destruction of any pawned articles;

(5) If so requested by the appropriate law enforcement agency, have a computer system which is capable of electronically transferring information and shall electronically transfer the daily reports required by §45-6-209 to the appropriate local law enforcement agency; and

(6) Not have had a pawnbroker's license revoked in the state of Tennessee within the previous ten (10) years.

(b) If an applicant for a pawnbroker's license is a partnership, corporation or other business entity, the eligibility requirements of subsections (a)(1) and (a)(6) apply to each beneficial owner, partner, officer, major shareholder and director, whether acting individually or in the capacity of a beneficial owner, partner, officer, major shareholder or director.

SECTION 5. Tennessee Code Annotated, Section 45-6-207, is amended by deleting such section in its entirety and by substituting instead the following:

Section 45-6-207.

(a) Every person desiring to engage in the business of pawnbroker shall petition the county clerk in the county in which such pawnbroker business is to be operated for a license to conduct such business.

(b) Such petitions shall provide the following:

(1) The name of the person and, in case of a partnership or corporation, the names of the partners or of the officers and major shareholders of such corporation;

(2) The place, street and number where business is to be located;

(3) The amount of net assets or capital proposed to be used by the petitioner in the business;

(4) The signatures of at least ten (10) registered voters of good reputation of the county in which the pawnshop is to be located or of the county in which petitioner resides certifying to the good reputation and moral character of the applicant or applicants and as to a partnership or corporation, to the good reputation and moral character of each partner, officer, major shareholder and director;

(5) The statement required in subdivision (b)(3) shall be accompanied by an unaudited statement from a certified public accountant and must contain the following statement:

According to the information provided to me, the net assets, as defined in § 45-6-203, or proposed capital to be used by the applicant, (name), solely in the pawnbroker business located at (address), are valued at not less than seventy-five thousand dollars (\$75,000). I have no knowledge or information that such net assets will or may be used in any other business or pawnbroker business.

(6) An affidavit by petitioner that petitioner has not been convicted of a felony, drug-related offense or theft of property within the past ten (10) years and has not had a pawnbroker's license revoked in the state of Tennessee within the previous ten (10) years. If the applicant is a partnership or corporation, an affidavit from each partner, officer, major shareholder and director that he or she has not been convicted of a felony, drug-related offense or theft of property within the past ten (10) years and has not been a license holder or a partner, officer, major

shareholder or director of a license holder that has had its pawnbroker's license revoked in the state of Tennessee within the previous ten (10) years; and

(7) Certified funds in the amount of one hundred dollars (\$100) payable to the county clerk to defray the costs of investigation of the petition.

SECTION 6. Tennessee Code Annotated, Section 45-6-208, is amended by deleting such section in its entirety and by substituting the following:

Section 45-6-208.

Every petitioner who has:

(1) Satisfied the provisions of § 45-6-206;

(2) Paid the business tax and any other taxes as provided by law,

and

(3) Provided the information and statements required by § 45-6-207, shall be granted a license as herein provided. The license issued hereunder shall state the name of the person to whom issued, the place of business and street number where such business is located and the amount of capital employed and shall entitle the person receiving the same to do business only at the place designated in such license. On or before December 31 of each calendar year, each licensed pawnbroker shall furnish to the county clerk a prepaid insurance policy for the next calendar year on the items of property held as pledges for the benefit of pledgors to pay the stated value of pawned articles as recited on the pawn stub in case of loss or destruction of pawned articles. Such license shall not be transferable to another person, but may be transferred from one (1) address to another, with the consent of the county clerk, on

payment to the county clerk of a transfer fee of twenty-five dollars (\$25.00).

SECTION 7. Tennessee Code Annotated, Section 45-6-209, is amended by deleting such section in its entirety and by substituting instead the following:

Section 45-6-209.

(a) Every pawnbroker shall keep a consecutively numbered record of each and every pawn transaction which shall correspond in all essential particulars to the detachable pawn ticket attached. The consecutive numbering process for pawnbroker transactions dealing with over-the-counter purchases described in § 45-6-204(a)(7), shall be numbered and identified independently from a buy-sell agreement and/or a loan of money transaction.

(b) The pawnbroker shall, at the time of making the pawn transaction and/or buy-sell transaction, accurately enter upon the pawnshop copy of the records as well as on the pawn ticket and/or buy-sell ticket, all of the following information, which shall be typed or written in ink and in the English language:

- (1) A clear, complete and accurate description of the property, including serial numbers if pledged articles shall bear such;
- (2) The date and time of the pawn transaction;
- (3) The amount of cash loan advanced on the pawn transaction;
- (4) The full market value, as agreed upon by the pawnbroker and pledgor, of each item of property pledged; a separate value shall be stated for each item of property pledged, provided that a single value may be stated for pairs or groups of items forming a set;
- (5) The maturity date of the pawn transaction, which date shall not be less than thirty (30) days after the date of the pawn transaction;

(6) The name, race, sex, height, weight, date of birth, residence address and numbers from the item or items used as identification by the pledgor. Acceptable items of identification are the following, any of which must be current and valid:

- (A) A state-issued driver license;
- (B) A state-issued identification card;
- (C) A passport;
- (D) A valid military identification;
- (E) A nonresident alien border-crossing card;
- (F) A resident alien border crossing card; or
- (G) A United States immigration and naturalization service

identification. The governing body of the appropriate law enforcement agency may require that pawnbrokers make a photocopy of the item or items used for identification and keep such photocopy with the pawn ticket; and

(7) The right thumbprint of the pledgor, provided that if taking the right thumbprint is not possible the pawnbroker shall take a fingerprint from the left thumb or another finger and shall identify on the pawn ticket which finger has been used.

(c) The pledgor shall sign the stub providing the pledgor's residence address and shall receive the detached pawn ticket. In addition, the stub shall also be signed by the pawnbroker;

(d) The records required to be kept under subsection (b) above shall be kept without alteration by the pawnbroker for not less than five (5) years and shall be available for inspection each business day except Sunday by any law

enforcement agency. The pawnbroker shall surrender the original of such records upon request to the appropriate law enforcement agency.

(e) The governing body of the appropriate law enforcement agency may require that licensed pawnbrokers in its jurisdiction shall have computer systems in operation capable of electronically transferring information and, within forty-eight (48) hours following the day of pawn transactions, electronically transfer the information required by subsection (b)(1) through (6) to the appropriate law enforcement agency. Any such computer system shall be installed and operational within six (6) months of the effective date of any such requirement. Any pawnbroker that has not averaged at least twenty (20) pawn transactions per week in the preceding twelve (12) months may not be required to maintain such a computer system or to electronically transfer such reports. No law enforcement agency other than the appropriate law enforcement agency may require the electronic transfer of such reports from a pawnbroker.

(f) The appropriate law enforcement agency shall provide computer software at no cost to all pawnshops required to electronically transfer such reports. Such software shall enable the pawnbroker's computer system to record and electronically transfer the information required by §45-6-209(b)(1) through (b)(6). All such pawnshops shall:

(1) Use such software to electronically transfer required information to the law enforcement agency; or

(2) Use software that is able to communicate such information to the law enforcement agency in a computer format acceptable to that agency and compatible with such agency's software.

(g) Pawnbrokers not required to electronically transfer information shall deliver the information required by subsection (b)(1) through (6) to the



appropriate law enforcement agency, by mail or in person, within forty-eight (48) hours following the day of such transactions. Delivery by mail shall be deemed made when deposited in the United States mail, postage prepaid.

(h) Pawnbrokers that transfer any property to any other pawnshop or similar business shall keep consecutively numbered records of each and every such transfer. Such records shall include the names, addresses, and telephone numbers of the pawnshops or businesses to which the property is transferred. Pawnbrokers that receive any property from any other pawnshop or similar business shall keep consecutively numbered records of each such transfer. Such records shall include the names, addresses and telephone numbers of the pawnshops or businesses from which the property is transferred. Copies of all such records required to be kept by this subsection shall be delivered to the appropriate law enforcement agency within forty-eight (48) hours following the day of such transfer by mail or in person or by electronic transfer if the governing body of the appropriate law enforcement agency has required electronic transfer of the information required by subsection (b)(1) through (6) above.

(i) In any county having a population of more than eight hundred thousand (800,000) according to the 1990 federal census or any subsequent federal census, each licensed pawnbroker shall retain these records for a period of one (1) year. After such time these records shall be delivered to the appropriate law enforcement agency in the county.

(j) Notwithstanding the provisions of § 10-7-503, the records and information submitted to the appropriate law enforcement agency shall not be deemed public records subject to disclosure to the public as provided in Title 10, Chapter 7, Part 5.

SECTION 8. Tennessee Code Annotated, Section 45-6-210, is amended by deleting such section in its entirety and by substituting instead the following:

Section 45-6-210. In connection with and for a pawn or pawn transaction, no pawnbroker shall demand and receive a rate of interest greater than two percent (2%) per month of the amount of the loan advance under the pawn or pawn transaction, and no other charge of any description, for any purpose whatsoever, shall be made by the pawnbroker; except that the pawnbroker may charge, contract for and receive a fee not to exceed ten percent (10%) of the amount of the loan advance under the pawn or pawn transaction for storage, insuring the pledged goods, closing the loan, making daily reports to local law enforcement officers and for other expenses, losses of every nature whatsoever and for all other services. Such fee when made and collected shall not be deemed interest for any purpose of law. Such interest and fee shall be deemed to be earned, due and owing as of the date of the pawn transaction and a like sum be deemed earned, due and owing on the same day of each subsequent month.

SECTION 9. Tennessee Code Annotated, Section 45-6-212, is amended by deleting subdivision (10) in its entirety and by substituting instead the following:

(10) Keep open such pawnbroker's place of business before eight o'clock (8:00) a.m. or after six o'clock (6:00) p.m. of any day during the year, with the exception of thirty (30) days before Christmas, meaning November 25 through December 24, of each year, and then the pawnbroker may open such place of business at eight o'clock (8:00) a.m. and shall be entitled to close same at nine o'clock (9:00) p.m.; provided, that any municipality which contains within its corporate limits a portion of a military reservation which is located partially within the boundary of the state of Tennessee and partially within the boundary of another state and which has a population of not less than fifty-three thousand (53,000) and not more than seventy-five thousand (75,000) according to the

1980 federal census or any subsequent federal census, may extend such hours of operation established pursuant to this subdivision, but such extension of hours shall not exceed the hours authorized in the closest contiguous state to such municipality, and provided further that local governments may require pawnshops to remain closed all day on Sunday throughout the year provided that on Sundays from November 25 through December 24 of each year pawnshops shall be allowed to open at 12:01 p.m. and may remain open until nine o'clock (9:00) p.m., provided further that such Sunday business shall be for the purpose of retail sales only and no pawn transactions may be entered into or completed; or

SECTION 10. Tennessee Code Annotated, Section 45-6-215, is amended by deleting such section in its entirety and by substituting instead the following:

Section 45-6-215. Each pawnbroker licensed under the provisions hereof shall provide a safe place for the keeping of the pledged items of property on the premises listed on the pawnbroker's license for not less than thirty (30) days for a pawned item and not less than twenty (20) days for a purchased item. Each pawnbroker shall have sufficient insurance coverage on the property held on the pledge for the benefit of the pledgor to pay the full market value as recited on the pawn stub of the pawned article in case of destruction, theft or loss of such item. Such policy shall be made payable, in the case of loss, to the county clerk for the benefit of the pledgor to the extent of the full market value of pledged property, and such policy shall be deposited with the county clerk.

SECTION 11. Tennessee Code Annotated, Section 45-6-217, is amended by deleting such section in its entirety and by substituting instead the following:

Section 45-6-217. Every licensee under this part shall cause the name of the person to whom the license is issued with the words "Licensed Pawnbroker" to be printed or painted in large, legible characters and placed over the outside of the entrance

for customers to such shop, office or place of business. The pawnshop may also be called by a business name other than the name of the licensee.

SECTION 12. Tennessee Code Annotated, Section 45-6-218, is amended by deleting such section in its entirety and by substituting instead the following:

Section 45-6-218.

(a) Every person or agent or employee thereof who violates any of the provisions of this part other than § 45-6-212(7) shall, on conviction thereof, be guilty of a Class A misdemeanor.

(b) Any violation of § 45-6-212(7) shall be:

(1) a Class A misdemeanor if the value of the property received is five hundred dollars (\$500) or less;

(2) A Class E felony if the value of the property received is more than five hundred dollars (\$500) but less than one thousand dollars (\$1,000);

(3) A Class D felony if the value of the property received is one thousand dollars (\$1,000) or more but less than ten thousand dollars (\$10,000);

(4) A Class C felony if the value of the property received is ten thousand dollars (\$10,000) or more but less than sixty thousand dollars (\$60,000); and

(5) A Class B felony if the value of the property received is sixty thousand dollars (\$60,000) or more.

(c) If the violation of the provisions of this part is knowingly committed by the owner, major shareholder, partner or pawnshop manager or is committed with the knowledge and consent of an owner, major shareholder, partner or pawnshop manager, the appropriate law enforcement agency or the district attorney general may petition the circuit court of the county in which the pawnshop is located to suspend or revoke the license of such pawnbroker. The Tennessee Rules of Civil Procedure shall govern such a proceeding. Upon the filing of a proper petition, court shall issue an order requiring the

respondent to appear and show cause why the respondent's license should not be suspended or revoked depending on the nature and severity of the act. Any order of suspension shall make provisions for persons who have already pawned property to retrieve such property upon repayment of the amount loaned and any fees or interest due thereon.

SECTION 13. Tennessee Code Annotated, Section 45-6-219, is amended by deleting such section in its entirety and by substituting instead the following:

Section 45-6-219.

(a) Counties, incorporated municipalities, cities and taxing districts in this state shall have the authority by ordinance to adopt the provisions of this part and shall have the authority to adopt such further rules and regulations as the legislative bodies of such counties, incorporated municipalities, cities and taxing districts may deem right and proper. No county, incorporated municipality, city or taxing district shall have the authority to:

(1) Regulate interest fees (other than as set forth in subsection (b) below) or insurance charges;

(2) Regulate hours of operation other than as set forth in § 45-6-212;

(3) Regulate the nature of the business or types of pawn transactions;

(4) Regulate license requirements or require a pawnbroker's license from the county, incorporated municipality, city or taxing district;

(5) Require information from reports or pawn tickets different from that required in § 45-8-209; or

(6) Require a pawnbroker to hold over-the-counter purchase of goods which the seller does not intend to buy back for a period of more than twenty (20) business days before offering the merchandise for resale.

(b) No county, municipality, city or taxing district may charge a pawnbroker a fee for receiving, reviewing or processing daily reports or pawn tickets as set forth in this part, but the governing body of any county, municipality, city or taxing district which receives the daily reports from pawnbrokers as provided in this part may impose and collect a fee for each pawn transaction, not to exceed two dollars (\$2.00) per transaction, from the pledgor. Such fee shall be collected by the pawnbroker and remitted to the appropriate county, municipality, city or taxing district in the manner directed by the county, municipality, city or taxing district.

SECTION 14. Tennessee Code Annotated, Section 45-6-221, is amended by deleting such section in its entirety and by substituting instead the following:

Section 45-6-221. In any criminal prosecution for theft of any property which has been recovered from a pawnshop and returned to its rightful owner, the court shall provide for restitution from the defendant or defendants to such pawnshop for any losses suffered by the pawnshop as a result of the return of such property to the rightful owner. Such losses shall be measured as:

(1) The amount loaned on such property plus any interest and fees due on such pawn transaction as if the property had been redeemed at the end of the month in which the property is recovered from the pawnshop, or

(2) If the property has been purchased by the pawnshop, the amount paid by the pawnshop for such property. Interest shall accrue on any such losses from the date of the recovery of the property from the pawnshop at the rate of ten percent (10%) per annum until such losses have been repaid. A pawnbroker may obtain a civil judgment in a court of competent jurisdiction based upon such an order of restitution. Any such civil action must be filed within six (6) years of the date of the order of restitution or the date of the last payment made by the defendant if any payments have been made.

SECTION 15. This act shall take effect July 1, 2001, the public welfare requiring it.